

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Denise Ramirez, et al.,

Plaintiffs,

v.

Meta/Facebook,

Defendant.

Case No. 2:22-cv-02092-CDS-BNW

ORDER

Before the Court is Plaintiff Denise Ramirez's application to proceed in forma pauperis. ECF No. 1. Ramirez's application is incomplete, and the Court will therefore deny it without prejudice. Ramirez must file a new application or pay the requisite \$402 filing fee by January 29, 2023. In addition, Ramirez's complaint does not state a claim upon which relief can be granted. As a result, Ramirez's complaint will be dismissed without prejudice and she will be allowed to file an amended complaint no later than January 29, 2023.

I. In Forma Pauperis Request

A plaintiff can commence an action without paying the filing fees if she submits an affidavit stating that she lacks sufficient funds. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). An application is sufficient if it alleges that the affiant cannot pay the court costs and still afford the necessities of life. *Id.* (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)). If an application is incomplete, the Court may lack sufficient information to make this determination and the application can be denied. *Patton v. England*, No. CIV S-07-0286 FCD GGH PS, 2007 WL 708885, at *1 (E.D. Cal. Mar. 6, 2007).

Ramirez's application is defective in several respects: it does not have responses to questions 2, 3, 4, and 6. Given these defects, her application is incomplete and the Court lacks sufficient information to determine whether Ramirez can pay court costs and still afford the

1 necessities of life. Ramirez may re-file her application, but she must ensure that she fully and
 2 completely answers each question, including its subparts.

3 **II. Screening**

4 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
 5 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
 6 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
 7 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
 8 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
 9 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
 10 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient
 11 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*
 12 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
 13 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of
 14 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
 15 2014) (quoting *Iqbal*, 556 U.S. at 678).

16 In considering whether the complaint is sufficient to state a claim, all allegations of
 17 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
 18 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
 19 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
 20 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
 21 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* But
 22 unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
 23 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
 24 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

25 Here, Plaintiff submitted a complaint dated December 19, 2022. ECF No. 1-1. The
 26 document names Meta/Facebook as the only defendant. *Id.* The complaint alleges that “Meta is
 27 turning into a dark web” and that it is “affecting the masses.” *Id.* She seeks the prosecution of
 28 defendant, as it is “converting people into criminals.” *Id.* Plaintiff does not include any other

1 factual allegations. Without additional factual allegations regarding the underlying dispute, the
2 Court cannot evaluate whether Plaintiff's complaint states a claim against the defendant. The
3 Court, therefore, will dismiss Plaintiff's complaint without prejudice for the Plaintiff to file an
4 amended complaint.

5 The Court will note that Plaintiff does not have the authority to bring criminal charges.
6 "Criminal proceedings, unlike private civil proceedings, are public acts initiated and controlled by
7 the Executive Branch." *Clinton v. Jones*, 520 U.S. 681, 718 (1997). Thus, to the extent that is the
8 relief Plaintiff continues to seek, her complaint will fail.

9 If Plaintiff chooses to file an amended complaint, the document must be titled "Amended
10 Complaint." The amended complaint must contain a short and plain statement of the grounds for
11 the Court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the amended complaint must
12 contain a short and plain statement describing the underlying case and defendant's involvement in
13 the case. *See* Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of Civil Procedure adopt a
14 flexible pleading standard, Plaintiff still must give the defendant fair notice of the Plaintiff's
15 claims against it and Plaintiff's entitlement to relief.

16 Additionally, Plaintiff is advised that if she files an amended complaint, the original
17 complaint (ECF No. 1-1) no longer serves any function in this case. As such, the amended
18 complaint must be complete in and of itself without reference to prior pleadings or other
19 documents. The Court cannot refer to a prior pleading or other documents to make Plaintiff's
20 amended complaint complete.

21 **III. Conclusion**

22 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma*
23 *pauperis* (ECF No. 1) is DENIED without prejudice. By January 29, 2023 plaintiff must either (1)
24 file a new application to proceed in forma pauperis or (2) pay the requisite \$402 fee (\$350 filing
25 fee + \$52 administrative fee) for filing a civil action.

26 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to send plaintiff a copy
27 of a blank *in forma pauperis* application.
28

IT IS FURTHER ORDERED that failure to timely comply with this order may result in a recommendation to the district judge that this case be dismissed.


BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE